BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2009-342-WS - ORDER NO. 2010-2

JANUARY 5, 2010

IN RE:	Review of Avondale Mills, Incorporated's Rates Approved in Order No. 2009-394	))	ORDER

This matter comes before the Public Service Commission of South Carolina ("Commission") pursuant to the Commission's Directive dated August 12, 2009. In that Directive, the Commission initiated this docket for the purpose of reviewing the increase in rates and charges granted to Avondale Mills, Inc. ("Avondale" or the "Company") in Order No. 2009-394, issued in Docket No. 2008-460-WS. This docket and the preceding docket in which we approved the rate increases sought by the Company have together presented one of the most challenging and problematic sets of facts ever before us. As everyone now knows, the combination of a long history of artificially low, corporately subsidized rates, coupled with the Graniteville chlorine spill tragedy and resulting mill closure, and the Company's undisputed need thereafter to begin recovering the full ongoing costs of providing water and sewer service to its customers in the wake of the mill closure have amounted to a perfect storm causing hardship to all involved. In the light of those facts, we approach the present request for relief with great care and consideration for the difficult issues facing all the parties involved.

On or about September 1, 2009, Avondale moved to dismiss the docket, arguing that the Commission had no authority to open a docket to alter, amend, or rescind a final order. Avondale also asserted in its motion that the members of the Aiken County Legislative Delegation were prohibited from representing constituent views before the Commission by S.C. Code 58-3-142, and further that the State Ethics Act prohibited them from complaining of Avondale's rates. In our directive dated September 30, 2009, we held that, while the attorney legislators are prohibited by Section 58-3-142 from representing clients before the Commission in rate-fixing cases, they are nonetheless entitled to complain as to the reasonableness of utility rates pursuant to S.C. Code Ann. §58-5-270. We further held that the Commission was empowered, pursuant to S.C. Code Ann. §58-5-320, to rescind, alter or amend any of its orders after notice and opportunity to be heard. We therefore deny Avondale's motion to dismiss.

The Commission held a public hearing on September 30, 2009 in Graniteville, South Carolina, at which Avondale customers were afforded the opportunity to testify as to the reasonableness of the rates imposed pursuant to Order No. 2009-394. Thereafter, we held the full merits hearing in the offices of the Commission in Columbia on October 6, 2009. At the hearing, we heard the testimony of Avondale President, CEO, and CFO Jack R. Altherr, Jr., in which Mr. Altherr testified that, while the Company was sympathetic to its customers who complained of the magnitude of the increase in rates and charges, the increase in revenue was necessary to ensure the viability of the water and sewer system. Mr. Altherr further testified that to date, the Company had not disconnected any customers for nonpayment, and that it was willing to work with

customers experiencing hardship as a result of the increase imposed in July 2009 and to enter into payment plans to cure customer arrearages from July.

We also heard from Joe A. Taylor and Michael Hunt, who appeared as intervenors in this docket, along with several other Avondale customers, who complained of the high rates and of the impact of the rates upon their household budgets.

The intervenors proposed that the Commission prohibit the Company from collecting the July 2009 bills, based upon their assertion that customers were not given 30 days' notice of the rate increases before they were implemented. The Office of Regulatory Staff (ORS) proposed that the rates be reset prospectively to the old rates, and that the new rates be phased in over a six-month period. While aspects of both of these proposals have some appeal, we find that neither should be implemented. First, with regard to the intervenors' proposal that the July bills be rendered uncollectible, we find that such a measure would amount to unlawful retroactive ratemaking. Under the South Carolina Supreme Court's ruling in *Hamm v. Central States Health and Life Company of Omaha*, 299 S.C. 500, 386 S.E.2d 250 (1989), the Commission has no power to award refunds in the nature of reparations for past-approved lawful rates or charges. There is no allegation before us that the rates complained of were unlawfully sought or unlawfully approved. Second, the proposed prospective reinstatement of the old rates and six-month phase-in of the new rates is flawed in that it requires the Company to make physical improvements to the system, while at the same time depriving the Company of the revenue necessary to fund the improvements.

The Company's need for revenue to fund the continued improvement to the water and sewer systems serving its customers, coupled with the longstanding legal prohibition of retroactive ratemaking, constrains us in regard to the relief we are able to consider; thus, we hereby grant relief to the customers in the form of additional time to pay any arrearages resulting from the first bills after the rate increases were approved. During the hearing, Mr. Altherr testified that the Company would be willing to accept installment payments on the July arrearages. Accordingly, we hereby order Avondale to allow its customers having arrearages resulting from the July bills to pay their July arrearages in two equal monthly installments, beginning in December 2009. Avondale shall not initiate efforts to discontinue service, charge interest or late fees to affected customers during this time. This relief is limited to arrearages resulting from nonpayment or partial payment of the bills issued in July 2009 only. This relief is interim in nature, and we hold the remaining issues in this docket in abeyance until the time of the proposed sale and transfer of the water facilities to Valley Public Service Authority and of the sewer facilities to Aiken County.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Elizabeth B. Fleming

Elizabeth B. Fleming, Chairman

ATTEST:

John E. Howard, Vice Chairman

(SEAL)

DISSENTING OPINION

COMMISSIONER MITCHELL, DISSENTING:

I write separately to respectfully explain my dissenting vote in Docket No. 2009-342-WS. This case has been one of the most troubling and difficult rate cases I have encountered during my tenure on the Commission. While I know the utility in this case was overdue for a rate increase, having operated under its prior rates continuously since 1980, I believe Avondale should bear some responsibility for having waited so long to apply for rate relief. Avondale acquired the system in September 1996, and even at that time, more than 13 years ago, the rates being charged were almost certainly too low. The timing of Avondale's petition for rate relief could hardly been worse considering that both the national economy and that of South Carolina are in recession. Also, with the closing of the Avondale mill in Graniteville, the local economy served by Avondale was especially hard hit. In addition, the timing of Avondale's petition for rate relief resulted in rate increases becoming effective during the summer months when water consumption is generally highest. Avondale's failure to seek rate relief for such an extended period; the economic conditions facing the nation, state, and locality; and the timing of Avondale's petition for rate relief has led to rate shock causing hardship on its customers. In some cases, the rate increase has resulted in the July 2009 bills being a five, six, or even seven-fold increase over the immediate prior bill. I believe the resulting rate shock to Avondale's customers is not just and reasonable. I understand the courts have prohibited retroactive ratemaking, but I believe that the courts should craft an exception to the rule to deal appropriately with exceptional cases such as this.

I respectfully dissent and would have us grant greater relief to the ratepayers than provided in the Commission's decision.

Randy Mitchell